

**IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD**

(Special Original Jurisdiction)

WEDNESDAY, THE EIGHTH DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE S.ANANDA REDDY

WRIT PETITION NO : 11888 of 2005

Between:

A.Kareem, S/o.Sathar,
R/o.381, Nasurlabad, Mandal Birkuar, Nizamabad District.

..... PETITIONER

AND

- 1 APSRTC, Musheerabad, Hyderabad
rep. by its Managing Director.
- 2 The Regional Manager, APSRTC Nizamabad Region,
Nizamabad.
- 3 The Depot Manager, APSRTC Bus Depot, Banswada,
Nizamabad District

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ or direction particularly one in the nature of writ of mandamus declaring the impugned Proc.No.E2/468(2)/04-BSWD Dt.26.6.2004 in keeping the petitioner under forced leave on the ground of unfitness without providing any alternative employment is contrary to Sec. 47 of the Persons Disability (Equal Opportunity, Protection of Rights and Equal Opportunities) Act 1995 and also in violation of Art 14,16, and 21 of the Constitution of India and consequently direct the respondents to provide employment along with all consequential benefits in the interest of justice and fair play.

Counsel for the Petitioner: MR.V.NARASIMHA GOUD

Counsel for the Respondents: MR.V.T.M.PRASAD (S.C.FOR APSRTC)

The Court at the admission stage made the following ORDER :

This writ petition is filed by the petitioner for issuance of writ of *mandamus* declaring the action of the respondents in keeping him under forced leave on the ground of unfitness without providing any alternative employment, as contrary to the provisions of Section 47 of the Persons Disability (Equal Opportunity & Protection of Rights & Full Participation) Act, 1995 (for short 'the Act') apart from violation of the provisions of the Constitution of India, and for a consequential direction to the respondents to provide an employment with all consequential benefits.

2. According to the petitioner, he was appointed as a driver in the respondent-Corporation in the year 1983. His services were regularized w.e.f. 01.08.1985 and he was continued in service till he was asked to go on forced leave w.e.f. 25.06.2004 under Regulation 6A(4) of APSRTC Service Regulations on the ground that the Medical Board of the Corporation declared him as unfit for the post of Heavy Motor Vehicle Driver. It is stated by him that he can discharge any other duties as he has studied upto 6th class though failed 7th class. It is also stated by him that the third respondent extracted the work from him in the garage with the above alleged disability. It is further stated that though no leave was available to his credit, he was forced to go on leave without providing any alternative employment. Though he made a representation by issuing a notice dated 08.04.2005 bringing to the notice of the respondents about the provisions of the Act, the respondents did not take any favourable steps to take him into service. Hence, the present writ petition.

3. Heard the learned counsel for the petitioner and the learned counsel for the

respondents.

4. It is settled law that no employee can be removed or discharged from the service on the ground that he acquired disability in view Section 47 of the Act. The Apex Court in ***Kunal Singh v. Union of India*** held:

“An employee, who acquires disability during his service, is sought to be protected under Section 47 of the Act specifically. Such employee, acquiring disability, if not protected, would not only suffer himself, but possibly all those who depend on him would also suffer. The very frame and contents of Section 47 clearly indicate its mandatory nature. In construing a provision of a social beneficial enactment that too dealing with disabled persons intended to give them equal opportunities, protection of rights and full participation, the view that advances the object of the Act and serves its purpose must be preferred to the one which obstructs the object and paralyses the purpose of the Act. The language of Section 47 is plain and certain casting statutory obligation on the employer to protect an employee acquiring disability during service.”

Therefore, the respondent-Corporation is obligated to provide an alternative employment, which the petitioner can discharge without even being effecting his scale of pay, which is being drawn by him, in view of the provisions protecting the persons like the petitioner, who were found unable to perform the particular functions, are entitled for an alternative employment.

5. Therefore, the respondent – Corporation is directed to provide an alternative employment to the petitioner in terms of the provisions of Section 47 of the Act. The order is directed to be implemented within a period of two weeks from the date of receipt of a copy of this order.

6. The writ petition is accordingly disposed of at the stage of admission.

S.Ananda Reddy, J

Date: 08.06.2005

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To

- 1 The Managing Director, APSRTC, Musheerabad, Hyderabad.
- 2 The Regional Manager, APSRTC Nizamabad Region,
Nizamabad.
- 3 The Depot Manager, APSRTC Bus Depot, Banswada,
Nizamabad District
- 4 Two CD Copies